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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/889, 033	07/07/97	FRAZZITTA	B B-1003

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EXAMINER

ART UNIT	PAPER NUMBER
2613	14

DATE MAILED: 05/07/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)
	08/889,033	FRAZZITTA ET AL.
	Examiner	Art Unit
	Tung T. Vo	2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 January 2001.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-47 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-47 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

15) <input type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	20) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

In response to the Appeal Brief filed 1/8/01, the examiner must clarify the grounds of rejection. Therefore, a new final Office Action follows.

### ***Response to Arguments***

1. Applicant's arguments filed 1/8/01 have been fully considered but they are not persuasive.

The applicant recites that " the customer station(s) is/are positioned within the interior area of the building" which are not disclosed neither Casale nor Bustos nor McClure, pages 14-64 of the appeal brief.

In response to the applicant's argument, the examiner respectfully disagrees with the applicant. Bustos discloses the customer stations, where the rooms (104 of fig. 5D), exercise room, and lobby (120 of fig. 5D) are built within the interior area of the building (101 of fig. 5D). This suggests that the plurality of customer stations would be built inside the building of Casale when Casale and Bustos are combined to produce applicant's recited invention.

The applicant pointed out that neither Casale nor Bustos nor McClure taken alone or in combination discloses or suggests the following features as recited: "the customer station comprises: a frame, a cover, a door frame, at least one hinge, a subframe, a generally horizontally extending shelf", pages 65-70 of the appeal brief.

In response, As disclosed in the previous Office Action, all mechanism elements, "the customer station comprises: a frame, a cover, a door frame, at least one hinge, a subframe, a

Art Unit: 2613

generally horizontally extending shelf, " that are used to construct or build the customer station are well known in the art and taught by McClure (cols. 3, line 27 through col. 5, line 21). It would have obvious to one of ordinary skill in the art to combine Casale, Bustos and McClure to produce applicant's recited invention.

In further response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The applicant argued that that neither Casale nor Bustos nor McClure taken alone or in combination disclose or suggest the following features as recited: "the cover includes at least one storage location, the system comprises of plurality of customer stations, at least one customer station comprises a sensor, a video switching device, a video material presenting device", pages 70-76 of the appeal brief.

The examiner respectfully disagrees with the applicant. It is already submitted that the features are recited above as disclosed by McClure, and in combination of Casale and Bustos, where the cover includes at least one storage location (a hollow cartridge) by McClure, the system comprises of plurality of customer stations as taught by Bustos, at least one customer station comprises a sensor (camera) as taught by Casale, a video switching device and a video material presenting device as the display of McClure (figs. 1-5). Where Casale also discloses the

Art Unit: 2613

display (62) that is a video material presenting device. They are in the same field of endeavor so that the combined Casale, Bustos and McClure would obvious make applicant's invention.

The applicant shows that neither Casale nor Bustos nor McClure taken alone or in combination disclose or suggest the following features as recited: " the video switching device is operative to selectively connect to the customer visual display to either video material presenting device or the SP CCTV camera, a computer for storing data base at the service station, a secure room, the customer is produced by a method, wherein each of the customer stations being in operative connection to the SP station", pages 76-81 of the appeal brief.

The examiner respectfully disagrees with the applicant. It is submitted that the video switching device is operative to selectively connect to the customer visual display to either video material presenting device or the SP CCTV camera (col. 2, lines 27-56)(62) as taught by Casale, where Casale suggests that the processing video unit at the SP that would considered as a computer unit for storing data base such as a transaction. The examiner further provides a well-known computer for storing database at the service station and a secure room as taught by Kaehler (26 of fig. 1). The customer process of ordering is produced by a method as interpreted the processing method of ordering food suggested by Bustos (col.13, lines 48 through col. 14, line 21), and where each of the customer stations (104 of fig. 5D) being in operative connection to the SP station (110) taught by Bustos (fig. 5D), so they are from the same endeavor and combinable to make applicant's invention.

In response to the applicant's arguments as specified in claims 21-27, pages 82-88 of the appeal brief, the claimed features have been addressed in the previous paragraph. Therefore, the claimed invention is unpatentable over the combination.

Art Unit: 2613

In response to the applicant's argument, pages 89-102, it is noted that the applicant repeatedly argued the same features as shown in claims 2-27. All claimed features that have been addressed in the previous Office action, paper No. 9 and the discussion above are unpatentable over the combination of Casale, Bustos, McClure, and Kaehler.

The applicant has been argued that the Casale, Bustos, McClure, and Keahler neither discloses nor suggest the claimed invention because there is no teaching, suggestion, or motivation cited so as produce Appellant's invention.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2613

2. Claims 1-4, 12-13, 18-19, 24-27, 37-42, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casale et al. (US 5,287,948) in view of Bustos (US 5,816,443).

Re claims 1-4, 18, 19, 24-27, 37-42, and 47, Cascale discloses a food delivery apparatus comprising a building (10 fig. 1) comprises an interior area which includes an interior wall extending therein as set forth in the previous Office Action, paper No. 9. Furthermore, Cascale discloses a carrier (conveyor trays) (94 of fig. 14) is able to be selectively moved with a transaction item (food products) between the customer carrier delivery and receiving device and the SP carrier delivery and receiving device (col. 7, line 44 through col. 8, line 37), and the SP station (14 of fig. 1). Casale further discloses the food that is prepared within the second level housing (col. 6, lines 58-61), is inside the building (10 of fig. 1), and the customer station is on the side at lower level (ground level) of the building (10).

It is noted that Cascale discloses the customer station is on the side of the building but it is not inside the building as claimed in claims 1-3. However, Bustos teaches the customer stations (104, 115-118 of fig. 5D) are inside the building. Therefore, it would have been obvious to one of ordinary skill in the art to apply the teachings of Bustos into Cascale for constructing the customer stations as shown in fig. 5D inside the building as claimed, especially since inside eating will allow for comfort and shelter from the elements.

Re claims 12, 13, Casale further discloses the food delivery apparatus further comprises a plurality of customer stations, the first remotely locatable to another remotely locatable, (col. 2, lines 11 and 36). And the SP station is in operative connection with a communication selector device, protectable menu and order display unit, (col. 6, lines 48-57) are disposed for the customer to order, the transaction would be transmitted from the customer menu to the service

Art Unit: 2613

provider, at least one of customer stations comprises sensor as a camera to sense a person adjacent the customer station (col. 6, lines 33-36) includes an indicator as order received via menu when the customer presses on the menu display ordering food (col. 6, lines 49-53).

3. Claims 5-11, 14-16, 20-23, 28-36, and 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casale et al. (US 5,287,948) in view of Bustos (US 5,816,443) and M.C. McClure et al (US 3,294,342).

Re claims 5-11, 14-16, 20-23, 28, and 43-46, the combination of Casale and Bustos, specifically Casale, discloses the apparatus is to delivery food or product from the second housing (14) to the base housing (12) using the pneumatic conveyor, and the customer at the base housing is able to pick up or order food or product at window (20) having column (28) which contains food or product.

It is noted that the combination of Casale and Bustos fails to particularly disclose a cover is movably mounted on the frame and movable to enable access the opening in supporting to connect with the wall, a door frame, at least one hinge, a sub-frame, a shelf, at least one storage location as specified in claims 5-11, 14-16, 20-23, 28, and 43- 46. However, M.C. McClure teaches a service banking equipment (figs. 1-5) having a customer station (10), the service station (18) and a pneumatic tube which carrier (51) which move the capsule (40) from the customer station to the service station. M.C. McClure further suggests the customer station comprise a terminal which have a cover (36), the door carries the capsule, mounted on the frame to enable access to the opening (26') (col. 4, lines 24-34), a door frame (wherein the door (36) is connected to), one hinge, and a sub-frame are inherent in the art (fig. 1), wherein the cover

Art Unit: 2613

includes a generally horizontal extending shelf wherein the door (36) is open in position (36') the customer is enable to conduct writing or other activities on said shelf (col. 4, lines 31-33) and at least one storage (a hollow cartridge), and switching device in operative connection with the service station (46), wherein the service station is a secure room (the teller station (18) is inside the bank which is a secure room), see also (cols. 2-5). Therefore, it would have been obvious to one of ordinary skill in the art to modify the teachings of McClure into the customer station of the combination of Casale and Bustos in the same arrangement as claimed for the same purpose of serving the customer at the remote location in order to reduce time, and improve the productivity of servicing person by serving more than one customer at the time.

With regard to the various mechanical details listed in claims 5-11, 14-16, 20-23, 28, and 43- 46 such as a cover, a door frame, at least one hinge, at least one storage, a sub-frame that are notoriously well known in the art as a design choice. The specific mechanical shapes claimed are believed to be merely aesthetic design choice and are in any case not critical to the invention.

See In Re Seid, 73 USPQ 431 (CCPA 1947). See also In Re Kuhle, 188 USPQ 7 (CCPA 1975).

Re claims 29-36, see the analysis in claims 5-11.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Casale et al. (US 5,287,948) in view of Bustos (US 5,816,443) and M.C McClure et al (US 3,294,342), as applied in claims 1-16, and further in view of Kaehler (US 5,798,931).

Re claim 17, the combination of Casale, Bustos and McClure fails to particularly disclose a computer for storing database at the service station. However the use of the computer for storing database at the service station is well known in the art as taught by Keahler (26 of fig. 1). Therefore, one skilled in the art would obviously modify the computer (26) into the service

Art Unit: 2613

station of the combination of Casale, Bustos and McClure the same purpose of storing database for later review.

With regard to the claimed invention, the applied prior art is believed to formulate the rejections as described above. The obviousness is not only the specific teachings of a reference but also reasonable inferences which one of ordinary skill in the art would have logically drawn therefrom may be properly evaluated in formulating a rejection. In Re Preda, 401 F. 2d 825, 159, USPQ 342 (CCAP 1968) and In re Shepard, 319 R. 2d 194, 138 USPQ 148 (CCP 1963). Skill in the art is presumed. In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985). Furthermore, one skill in the art must be presumed to know something about the art apart from what the references disclose. In Re Jacoby, 309 F. 2d 513, 135 USPQ 317 (CCPA 1962). The obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F. 2d 1385, 163 USPQ 545 (CCPA 1969). Every reference relies to some extent knowledge of person skilled in the art to complement that which is disclosed therein. In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).

### *Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 2613

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

*Contact Information*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung T. Vo whose telephone number is (703) 308-5874. The examiner can normally be reached on M-F 7:30AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (703) 305-4856. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-6306 for regular communications and (703) 308-6306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Tung T. Vo  
Examiner  
Art Unit 2613

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May 4, 2001

  
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